

Service Date: December 27, 1999

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

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IN THE MATTER OF the Petition of)	UTILITY DIVISION
Ronan Telephone Company for Suspension of)	
Provisions of the 1996 Telecommunications Act,)	DOCKET NO. D99.4.111
pursuant to 47 U.S.C. § 251(f)(2) and 253(b))	ORDER NO. 6174e

ORDER ON RECONSIDERATION
ORDER DENYING PETITION AND CLOSING DOCKET

Introduction and Background

On November 3, 1999 the Montana Public Service Commission (Commission) issued Order No. 6174d in this docket, finding that Ronan Telephone Company (RTC) had failed to support a grant of its petition under 47 U.S.C. § 251(f)(2). The Commission issued a conditional denial of the petition pending the opportunity to provide additional evidence and argument pursuant to a supplemental procedural order and through arbitration proceedings in Docket Nos. D99.4.112 and D99.4.113. On November 10, 1999 the Commission issued Supplemental Procedural Order No. 6174d, giving RTC, at its discretion, until December 15, 1999 to respond to certain supplemental issues, and establishing a supplemental procedural schedule.

Both RTC and Montana Wireless, Inc. (MWI) filed motions for reconsideration of Order No. 6174c. The Commission denied the motions for reconsideration on December 6, 1999. Notice of Commission Action, December 8, 1999. On December 16, 1999 the Commission received a letter from Jay Preston, president of RTC, indicating that RTC would not respond to Supplemental Procedural Order No. 6174d.

Discussion

On reconsideration RTC argues that: 1) the Commission should grant the petition based on economic principles; and 2) the Commission should grant the petition because RTC faces unlawful subsidized competition. If the Commission disagrees, RTC suggests alternative procedural relief.

RTC's argument that the laws of economics support its view of the future of competition for RTC and its customers, absent the exemption requested, is either not new to this docket, or is inappropriate in a motion for reconsideration. RTC had the opportunity, through its expert witnesses, to make the economic arguments that support its position. To the extent RTC failed to make such arguments through its expert witnesses it cannot make them on reconsideration. To the extent RTC made the arguments through its experts, the arguments on reconsideration are repetitive and fail to convince the Commission to change the conclusions it reached in Order No. 6174c. There is testimony on the record from an economist that conflicts with RTC's advocacy for the conclusions that should be reached from the evidence. See testimony of Allen Buckalew for the Montana Consumer Counsel. In addition, the Commission has expertise in economics, and simply disagrees with RTC over what the laws of economics dictate in this case.

RTC also contends on reconsideration that certain of the competitors it confronts are, or may be, illegally subsidized. The Commission has previously ruled it will not entertain RTC's complaints of possible illegal subsidization in this docket. See Order No. 6174b, Order on Motion to Quash Subpoena Duces Tecum and Request for Protective Order and Sanctions, September 17, 1999; Ruling on MWI Motion in Limine, hearing transcript, p. 19; Notice of Commission Action, October 8, 1999. The Commission reaffirms those rulings in this Order.

Finally, RTC urges that, if the Commission does not change Order No. 6174c, it should consider procedural alternatives to spare RTC further expense. The Commission understands that this docket has been expensive for all parties, but will continue the process already established.

MWI argues that Order No. 6174c, and Supplemental Procedural Order No. 6174d are unlawful because "there is nothing in federal or state law that allows the Commission to hold a record open for supplemental proceedings in order to assist the moving party to meet its burden of proof." MWI brief in support of motion, p. 2. MWI also argues that "the Commission may not hold the record open and order supplemental proceedings based upon public concern when the order itself did not address this statutory element." Id. Neither argument has merit.

The conditional denial in Order No. 6174c, and Supplemental Order No. 6174d, were not designed to "assist [RTC] to meet its burden of proof." Rather, they were designed to assist the Commission in making the right decision on RTC's petition. This reflects a fundamental

difference between administrative and judicial decisionmakers, about which there is abundant case law and treatise discussion. Commission rule allows rehearing if such is in the public interest. ARM 38.2.4805(4). There is nothing unlawful, or particularly unusual about holding a record open for additional evidence and argument.

The Commission did not base the conditional denial on the "public interest," as that term is used in 47 U.S.C. § 251(f)(2)(B). Rather, the Commission indicated that while, based on the record to date, the RTC petition should be denied, the extraordinary interest in the docket expressed by members of the public tipped the scales in favor of a supplemental proceeding. The supplemental questions posed in Supplemental Order No. 6174d were aimed at further evidence and argument on § 251(f)(2)(A). Only if RTC could meet one of those tests, would the Commission need to consider § 251(f)(2)(B). The interest of members of the public and the public interest are not the same things.

As a result of RTC's decision not to respond to Supplemental Procedural Order No. 6174d, RTC's petition, consistent with Order No. 6174c, must be denied.

Conclusions of Law

1. Ronan Telephone Company is a "local exchange carrier with fewer than two percent of the Nation's subscriber lines installed in the aggregate nationwide. . . ." 47 U.S.C. § 251(f)(2); § 69-3-834(5)(A), MCA.

2. Ronan Telephone Company may petition the Montana Public Service Commission "for a suspension or modification of the application of a requirement or requirements of [47 U.S.C. § 251(b) and (c)] to telephone exchange service facilities specified in such petition." 47 U.S.C. § 251(f)(2); § 69-3-834-(5)(a), MCA.

3. When considering a petition filed pursuant to 47 U.S.C. § 251(f)(2) and § 69-3-834(5), MCA, the Montana Public Service Commission is bound by the standards specified at 47 U.S.C § 251(f)(2) and § 69-3-834(5), MCA.

4. Ronan Telephone Company has failed to demonstrate on this record that it should be exempt from the requirements of 47 U.S.C. § 251(b) and (c), because it has failed to demonstrate that exemption is necessary 1) "to avoid a significant adverse economic impact on users of telecommunications services generally"; 2) "to avoid imposing a requirement that is

unduly economically burdensome"; or 3) "to avoid imposing a requirement that is technically infeasible[.]"

Order

The motions for reconsideration of Order No. 6174c are denied. Because RTC did not respond to Order No. 6174d by December 15, 1999, RTC's petition to suspend provisions of the Telecommunications Act of 1996 pursuant to 47 U.S.C. S 251(f)(2) and 253(b) is denied. This is a final order for purposes of judicial review. This docket is closed.

DONE AND DATED this 21st day of December, 1999 by a vote of 3 - 0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

NANCY MCCAFFREE, Vice Chair

GARY FELAND, Commissioner

BOB ROWE, Commissioner

ATTEST:

Kathlene M. Anderson
Commission Secretary

(SEAL)